

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

JOSEPH TAYLOR,

Plaintiff,

v.

**Civil Action No. 2:23-cv-00475
Honorable Irene C. Berger**

**WEXFORD HEALTH SOURCES,
INCORPORATED, et al,**

Defendants.

**WEST VIRGINIA DIVISION OF CORRECTIONS AND REHABILITATION’S
NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendant West Virginia Division of Corrections and Rehabilitation (“WVDCR”) by and through counsel William E. Murray, Jennifer E. Tully, Justin C. Taylor, and the law firm of Bailey & Wyant, PLLC and hereby respectfully submits the very recent decision of the Intermediate Court Of Appeals Of West Virginia (ICA), *Daniels v. DAL Global Services, Inc.*, (<https://www.courtswv.gov/sites/default/pubfiles/mnt/2024-06/23-ICA-212%20Opinion.pdf>) (Attached as **Exhibit A**, Published June 5, 2024) as relevant to its Motion for Summary Judgment pursuant to Rule 56 of the *Federal Rules of Civil Procedure*.

The ICA’s decision provides additional support for the WVDCR’s argument that as a current and active user of illegal drugs (methamphetamine and fentanyl) during the relevant time frame, plaintiff is not entitled to protections under the ADA. “Under the ADA and the WVHRA illegal drug use is not protected.” *Id.* Furthermore, citing *Foster v. Nash*, No. 2:19-cv-00818, 2020 WL 3318268, at *3 (S.D.W. Va. June 18, 2020), the ICA notes that “[t]erminating an employee for ‘current illegal drug use’ does not constitute discrimination based on disability under anti-

discrimination laws.” Similarly to the case at bar, making medical and security decisions based on the ‘current illegal drug use’ of the plaintiff, cannot be discrimination pursuant to the law and plaintiff’s claims should be dismissed.

**WEST VIRGINIA DIVISION OF
CORRECTIONS AND
REHABILITATION,
By Counsel,**

/s/ Justin C. Taylor

William E. Murray (WV Bar #2693)

Jennifer E. Tully (WV Bar #9356)

Justin C. Taylor (WV Bar #8014)

BAILEY & WYANT, PLLC

500 Virginia Street, East, Suite 600

Post Office Box 3710

Charleston, West Virginia 25337-3710

T: 304.345.4222

F: 304.343.3133

wmurray@baileywyant.com

jtully@baileywyant.com

jtaylor@baileywyant.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

JOSEPH TAYLOR,

Plaintiff,

v.

**Civil Action No. 2:23-cv-00475
Honorable Irene C. Berger**

**WEXFORD HEALTH SOURCES,
INCORPORATED, and WEST
VIRGINIA DIVISION OF
CORRECTIONS AND
REHABILITATION,**

Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing **WEST VIRGINIA DIVISION OF CORRECTIONS AND REHABILITATION'S NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** was served upon the following parties through the Court's Electronic Case Filing (ECF) system on this day, June 7, 2024:

Jordan K. Herrick
Adam K. Strider
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
Charleston, WV 25301
Attorney For: Wexford Health Sources, Inc.

Amelia Caramadre
David H. Sinkman
Nabihah Maqbool
Sarah Grady
Kaplan & Grady, LLC
2071 N Southport Ave, Ste 205
Chicago, IL 60614
Attorney For: Joseph Taylor

Lydia C. Milnes
Lesley M. Nash
Mountain State Justice, Inc.
1029 University Avenue
Suite 101
Morgantown, WV 26505
Attorney For: Joseph Taylor

/s/ Justin C. Taylor
William E. Murray (WV Bar #2693)
Jennifer E. Tully (WV Bar #9356)
Justin C. Taylor (WV Bar #8014)
BAILEY & WYANT, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
T: (304) 345-4222
F: (304) 343-3133
wmurray@baileywyant.com
jtully@baileywyant.com
jtaylor@baileywyant.com